the right and the recovery were indistinguishable parts of a single process. All that happened in the year 1950 was that the appellants asserted a claim which was of very doubtful value in the absence of material evidence, and they recovered $4,700 as a result of that claim.

Mr. Salt, however, relied on the words "became liable to pay" in paragraph 4 of the Agreed Statement. Their Lordships do not think it possible to treat these words as an agreed admission that an actual debt of $9,285.71 was due on the 1st October, 1949. It is much more probable that paragraph 4 was only intended to deal with a matter of arithmetic, stating the sum which the debtor would be liable to pay on the assumption that the case fell within section 4 (2) *(b)* of the Ordinance of 1948. Their Lordships find it difficult to suppose that the parties regarded the paragraph as being (in effect) an admission that no demand for repayment had been made by or on behalf of the creditor. The Agreed Statement was put in before Ramasamy Chettiar gave evidence, and if that document had contained the admission just mentioned it would have been quite unnecessary for the appellants to call him as a witness. Further, the admission, if made, would apply to every debt included in the total claim of the appellants, and it is unlikely that the appellants would have accepted such small sums in settlement from so many debtors of whom it could accurately be said that they were "liable to pay" substantially larger ones. For these reasons para. 4 must be treated as no more than an arithmetical statement of the full sum potentially due.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Bulcraig & Davies; Charles Russel & Co.*

TOH CHING KWAN v. NG AH KAK & ANOR.

[A. C. J. (Wilson J.) July 8, 1955]

[K. L. — Civil Appeal No. 5 of 1955]

Landlord and Tenant — Control of Rent Ordinance, 1948 — Control of Rent (Amendment) Ordinance, 1949 — "Premises" — Meaning of — Whether it includes land upon which a building was completed after January 13, 1948 — Notice to quit — Tenancy from year to year.

This was a claim for possession of a piece of land upon which a building had been erected. The appellant had built the house on the land in 1952 with the consent of the then landlord. He went into possession of the land under an agreement which purported to give him the right to occupy the land for 20 years at a rent of $10 per month. A notice to quit had been sent to the appellant on March 12, 1954 to take effect on April 30, 1954. The respondents did not obtain the consent of the Rent Assessment Board before filing the plaint in the Sessions Court. The appellant appealed against the decision of the Sessions Court, giving possession to the respondents.

Held: (1) the word "premises" in the Control of Rent (Amendment) Ordinance, 1949, does not include land upon which a building was completed after January 31, 1948; (2) the agreement under which the appellant went into possession of the land was null and void as it had not been registered but as the appellant had gone into possession of the land and occupied it and paid rent, a tenancy from year to year was thereby created, although the rent was to be paid and was paid monthly; (3) therefore the notice to quit that was given was bad.

MAGISTRATE'S CIVIL APPEAL.

D. G. Rawson for the appellant.

N. A. Marjoribanks for the respondents.

Cur. Adv. Vult.

Wilson J. : — This was a claim for possession of a piece of land on which it was alleged in the statement of claim that there was an unauthorised building, and it was alleged that any title the defendant may have had had been determined by a notice to quit sent on the 12th March, 1954, to take effect on the 30th April, 1954. It is quite clear that the defendant had built the house on the land in 1952 with the consent of the then landlord. He went into possession of the land under an agreement which purported to give him the right to occupy the land for twenty years at a rent of $10 per month. The plaintiffs did not obtain the consent of the Rent Board before filing the plaint in the Sessions Court. The facts are fully set out in the judgment of the learned President and I do not find it necessary to refer to them further.

It has been argued that by reason of the definition of "premises" contained in the Control of Rent (Amendment) Ordinance No. 61 of 1949 the Control of Rent Ordinance No. 6 of 1948 applies to the land in question, even though the building was erected after the 31st January, 1948. I cannot agree with this contention. Although "premises" includes land it only includes land upon which a building has been erected with the consent of the landlord, but a building does not include a building completed after the 31st January, 1948. In my opinion, "premises" does not include land upon which a building was completed in 1952.

The agreement under which the appellant went into possession of the land was never registered and was null and void. However, the appellant having gone into possession of the land and occupied it and paid rent, I am of opinion that a tenancy from year to year was thereby created, even though the rent was to be paid and was paid monthly

In these circumstances I find that the notice to quit was bad and that for this reason the appeal must succeed. The appeal will be allowed with costs and the respondents must also pay to the appellant the costs in the Sessions Court.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; Lovelace & Hastings.*

M. WEINBERG v. LIM SEOW PENG

[C. A. (Murray-Aynsley C.J., Storr and Knight JJ.) July 8, 1955]

[Singapore — Civil Appeal No. 10 of 1955]

Landlord and Tenant — Tenant not in actual occupation — Tenant not a party to ejectment proceedings — Whether order for possession against husband deprives her of her rights in the premises — Control of Rent Ordinance, 1953.

In this case ejectment proceedings were taken by the landlord against the husband of the tenant, whilst she was abroad. An order for possession was accordingly made against him. The husband now appeals against that decision.

Held: once a person was in possession he could only be deprived of the protection of the Ordinance by going out of possession or having an order for possession made against him (Brown v. Draper[3]). In this case, as the tenant had not abandoned her rights over the premises, the effect of the order for possession against her husband would be to deprive her of those rights, and therefore the appeal must be allowed.

Cases referred to:—

(1) *Renon v. City of London Real Property Co.* (1921) 1 K.B. 49.

(2) *Cruise v. Terrell* (1922) 1 K.B. 664.

(3) *Brown v. Draper* (1944) 1 K.B. 309; (1944) 1 All E.R. 246.

COURT OF APPEAL.

R. H. Green for the appellant.

P. F. X. Leonard for the respondent.

Cur. Adv. Vult.

Murray-Aynsley C.J.: — In this case the appellant's wife was a contractual tenant of a dwelling house to which the Control of Rent Ordinance applied. She left the Colony leaving her husband in the premises and is still away. The contractual tenancy was duly determined and proceedings in ejectment were taken by the respondent against the appellant to which the wife was not a party. Circumstances had arisen which would have conferred jurisdiction on the Court to make an order for possession against the tenant if proceedings had been taken against her. Judgment was given in favour of the owner of the premises, and against that decision an appeal is now brought.

It is clear that the wife of the appellant has not abandoned her rights over the premises and, except as provided by section 16, actual occupation by the person claiming protection of the Ordinance is immaterial. That section does not apply to the present case.

At an early stage in the history of the Rent Acts in England (which like the local Ordinance impose restriction on the Courts in claims for possession) it was decided that where protection is given by the Acts the landlord cannot avail himself of extra-judicial means of obtaining possession; (see *Renon v. City of London Real Property Co.*[1] and *Cruise v. Terrell*[2]). This was not because there was any express provision to that effect but because, unless the Courts supplied such a provision, the protection given by the Acts would be nugatory. As a result of development of case law the position in England is as laid down in *Brown v. Draper*[3], to the effect that once a person was in possession he could only be deprived of the protection of the Acts by going out of possession or having an order for possession made against him. It is clear that the wife of the appellant still retains rights in the house and the effect of an order for possession against the husband would be to deprive her of those rights. That, in my opinion, would be a sufficient reason for allowing the appeal.

I consider that the English cases should be applied in the Colony, because the conditions which rendered them necessary in England prevail here. *Brown v. Draper*[3] covers the point and is a stronger case because there the husband had deserted the wife against whom proceedings were taken and had given evidence to the effect that he had no interest in the house.

It is unfortunate that in the Court below the appellant was unrepresented and the relevant cases were not cited.

I think that the judgment of the Court below must be set aside and judgment entered for the appellant with costs here and below. Deposit to appellant.

Storr and **Knight JJ.** concurred.

Appeal allowed.

Solicitors: *Braddell Bros.; Sisson & Delay.*